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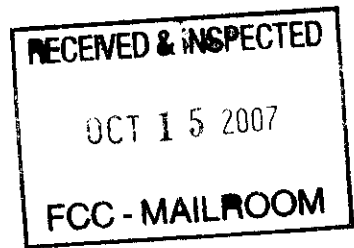
Appeal Letter
Contact Person:

10/3/2007

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CC: 02-6

DOCKET FILE COPY ORIGINAL



This is an appeal letter. We are appealing two FRN decisions by the USAC.

Reference: CC Docket No. 02-6

This is an appeal of an appeal denied by the SLD. The exact text of that decision is included in this appeal. Also included within this letter of appeal is the decision that prompted the appeal.

The decision to deny the appeal was based upon the fact that Bethany Public Schools signed a contract with the service providers, SBC for basic telephone service and Pioneer Long Distance for a T-1 line after the filing of the 471. We are appealing this ruling because the two FRNs were filed as Month to Month and Tariffed service. The contracts, which were in fact completed after the filing of the 471s, were part of a group of contracts that the Director of Special Services, who has additional responsibilities of filing E-Rate, mistakenly included in a group of contracts that were to go before the board. Those two FRNs were not intended, at the time of filing the 471, to be included in the contracted services. This appeal is based upon a previous ruling by the FCC that allows for Month to Month and Tariffed services to not be contracted, as well as the fact that the contracts were completed in error. We have tried to be completely transparent in our communication with the SLD, even knowing that we had made this mistake.

Applicant Name: Bethany Public Schools

Applicant Name and Service Provider Name: Bethany Public Schools and Southwestern Bell Telephone, L.P. and Pioneer Long Distance, Inc.

Applicant BEN: 139739

Service Provider Identification Number: (SBC)143004662 (PLD) 143001169

Form 471 Application Number: 497533

Funding Commitment Decision Letter for Funding Year 2006

Exact text or the decision that Bethany Public Schools are appealing

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Re: Applicant Name: BETHANY PUBLIC SCHOOLS

Billed Entity Number: 139739

Form 471 Application Number: 497533

Funding Request Number(s): 1370251, 1370305

Your Correspondence Dated: April 13, 2007

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2006 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1370251, 1370305

Decision on Appeal: **Denied**

Explanation:

During the appeal review, USAC thoroughly assessed the facts presented in the

appeal letter, the relevant documentation on file, and the FCC Rules and procedures before making its determination on your appeal. On May 4, 2006, via

the Selective Review Information Request (SRIR), Bethany Public Schools was

asked to provide signed and dated copies of any and all agreements related to each

of the Form 471 funding request(s), including any and all contracts, agreements,

Statements of Work, etc., and any and all agreements between the applicant and

the service provider related in any way to the applicant's funding request and/or

provision of E-rate related services. Bethany Public Schools provided contracts

that were signed and dated by both the beneficiary and service provider after the

Certified Postmark Date. On appeal, the applicant was given the opportunity to

verify that they had provided the correct contract for the requested services.

The

applicant certified that the contract award dates were January 16, 2006, which was after the form 471 was filed. On June 27, 2007, applicant was sent a letter informing them that they would be denied and were given an opportunity to provide alternative information. On July 5, 2007, the applicant confirmed that they had no information to add at this time. Therefore, USAC was not able to determine if Bethany Public Schools had a signed contract in place with the service provider at the time of filing the Form 471. Except for services to be delivered under non-contracted tariff or month-to-month arrangements, FCC rules require that an applicant sign a contract with the service provider before signing and submitting a completed (certified) Services Ordered and Certification Form (Form 471). Since you provided contracts during Selective Review, the services are contracted tariff services and therefore must follow program rules. Applicants must be able to demonstrate that it had a signed contract in place at the time it submitted the completed Form 471. You have failed to provide evidence that USAC erred in its decision; consequently, the appeal is denied. USAC has determined that, at the time you submitted your Form 471 application, you did not have a signed contract for services in place with your service provider(s) for services other than tariff or month-to-month services. FCC Rules require that applicants submit a completed FCC Form 471 "upon signing a contract for eligible services." 47 C.F.R. sec. 54.504(c). The FCC has consistently upheld USAC's denial of funding when there is no contract in place for the funding request. See Request for Review by Waldwick School District, Schools and Libraries Universal Service Support Mechanism, File No. SLD-256981, CC Docket No. 02-6, Order, 18 FCC Rcd. 22994, DA 03-3526 (rel. Nov. 5, 2003).

The FCC Form 471 instructions under Block 5 clearly state that you MUST sign a

contract for all services that you order on your Form 471 except tariff services and

month-to-month services. See Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) at page 23.

If your appeal has been approved, but funding has been reduced or denied, you may

appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC.

You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC.

Your appeal must be received or postmarked within 60 days of the date on this letter.

Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division

Appeal: This telephone service is tarified. A contract is not needed for a tarified service. Item 15A of Bethany Public Schools 471 Application states that this service is tarified/Month to Month.

FCC 07-35 states "Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections.¹ Our rules provide that, with one limited exception for existing, binding contracts, an eligible school, library, or consortium that includes eligible schools or libraries must seek competitive bids for all services eligible for support.² In accordance with our rules, an applicant must file with USAC an FCC Form 470 requesting services.³ After the FCC Form 470 is posted to USAC's web site, the applicant must wait 28 days before entering into an agreement with a service provider for the requested services and submitting an FCC Form 471.⁴ Section 54.504(c) of our rules also states that the FCC Form 471 requesting support for the services ordered by the applicant shall be submitted "upon signing a contract for eligible services."⁵ Specifically, the instructions for FCC Form 471 state that applicants must have a "signed contract" or a "legally binding agreement" with the service provider "for all services" ordered on the FCC Form 471.⁶

3. There are two exceptions to this rule: non-contracted tarified services and certain month-to-month services. If the services are month-to-month, applicants can instead submit copies of standard

¹ 47 C.F.R. §§ 54.502, 54.503.

² 47 C.F.R. §§ 54.504, 54.511(c).

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⁴ 47 C.F.R. § 54.504(b)(4); see also Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 471).

⁵ 47 C.F.R. § 54.504(c); see also *Request for Review of Waldwick School District, Schools and Libraries Universal Service Support Mechanisms*, File No. SLD-234540, CC Docket No. 02-6, Order, 18 FCC Rcd 22994, 22995, para. 3 (Wireline Comp. Bur. 2003) (*Waldwick Order*); *Request for Review of St. Joseph High School, Schools and Libraries Universal Service Support Mechanisms*, File No. SLD-234540, CC Docket Nos. 96-45, 97-21, Order, 17 FCC Rcd 22499, 22500-01, para. 4 (Wireline Comp. Bur. 2002) (*St. Joseph Order*).

⁶ Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2001) (FCC Form 471 Instructions) at 19.

monthly bills as proof that they have binding, legal arrangements with service providers. In addition, applicants are instructed to indicate that such situations exist by filing the abbreviation "MTM" in Item 15 of the FCC Form 471."

Exact text of the decision that Bethany Public Schools are appealing

Funding Request Number 1370305
Funding Status: Not Funded
Category of Service: Internet Access
Form 470 Application Number: 191060000547074
SPIN: 143001169
Service Provider Name: Pioneer Long Distance, Inc.
Contract Number: N/A
Billing Account Number: M117775
Service Start Date: 07/01/2006
Contract Expiration Date: 06/30/2007
Number of Months Recurring Service Provided in funding Year: 12
Annual Pre-discount Amount for Eligible Recurring Charges: \$10,620.00
Annual Pre-discount Amount for eligible Non-recurring Charges: \$.00
Pre-discount Amount \$10,620.00
Discount Percentage Approved by the USAC: N/A
Funding Commitment Decision: \$0.00 – Contract Violation
Funding Commitment Decision Explanation: No contract was in place when the Form 471 certification was filed.

FCDL Date: 04/03/2007
Wave Number: 047
Last Allowable Date for Delivery and Installation for non-Recurring Services: 09/30/2008

Appeal: This Internet Service is tariffed. A contract is not needed for a tariffed service. Item 15A of Bethany Public Schools 471 Application states that this service is tariffed/Month to Month.

FCC 07-35 states "Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections."⁷

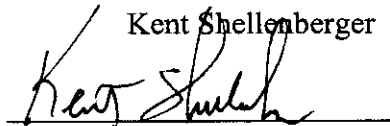
⁷ 47 C.F.R. §§ 54.502, 54.503.

Our rules provide that, with one limited exception for existing, binding contracts, an eligible school, library, or consortium that includes eligible schools or libraries must seek competitive bids for all services eligible for support.⁸ In accordance with our rules, an applicant must file with USAC an FCC Form 470 requesting services.⁹ After the FCC Form 470 is posted to USAC's web site, the applicant must wait 28 days before entering into an agreement with a service provider for the requested services and submitting an FCC Form 471.¹⁰ Section 54.504(c) of our rules also states that the FCC Form 471 requesting support for the services ordered by the applicant shall be submitted "upon signing a contract for eligible services."¹¹ Specifically, the instructions for FCC Form 471 state that applicants must have a "signed contract" or a "legally binding agreement" with the service provider "for all services" ordered on the FCC Form 471.¹²

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Sincerely,

Kent Shellenberger



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Copy of Appeal sent to SLD

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Appeal Letter

4/13/07

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Applicant Name and Service Provider Name: Bethany Public Schools and Southwestern Bell Telephone, L.P. and Pioneer Long Distance, Inc.

Applicant BEN: 139739

Service Provider Identification Number: (SBC)143004662 (PLD) 143001169

Form 471 Application Number: 497533

Funding Commitment Decision Letter for Funding Year 2006

Exact text or the decision that Bethany Public Schools are appealing

Form 471 Application Number 497533

Funding Request Number: 1370251

Funding Status: Not Funded

Category of Service: Telecommunications Service

Form 470 Application Number: 191060000547074

SPIN: 143004662

Service Provider Name: Southwestern Bell Telephone, L.P.

Contract Number N/A

Billing Account Number: 405-789-3801

Service Start Date: 07/01/2006

Contract Expiration Date: 06/30/2007

Number of Months Recurring Service Provided in Funding Year: 12

Annual Pre-discount Amount for Eligible Recurring Charges: \$12,876.00

Annual Pre-discount Amount for Eligible Non-recurring Charges: \$.00.

Pre-discount Amount: \$12,876.00

Discount Percentage Approved by the USAC: N/A

Funding Commitment Decision: \$0.00 – Contract Violation

Funding Commitment Decision Explanation: No contract was in place when the form 471 was filed.

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"Providing Opportunities for Excellence"

Years
1910-2007

Appeal: This telephone service is tariffed. A contract is not needed for a tariffed service. Item 15A of Bethany Public Schools 471 Application states that this service is tariffed/Month to Month. FCC 07-35 states "Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections."¹ Our rules provide that, with one limited exception for existing, binding contracts, an eligible school, library, or consortium that includes eligible schools or libraries must seek competitive bids for all services eligible for support.² In accordance with our rules, an applicant must file with USAC an FCC Form 470 requesting services.³ After the FCC Form 470 is posted to USAC's web site, the applicant must wait 28 days before entering into an agreement with a service provider for the requested services and submitting an FCC Form 471.⁴ Section 54.504(c) of our rules also states that the FCC Form 471 requesting support for the services ordered by the applicant shall be submitted "upon signing a contract for eligible services."⁵ Specifically, the instructions for FCC Form 471 state that applicants must have a "signed contract" or a "legally binding agreement" with the service provider "for all services" ordered on the FCC Form 471.⁶

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Category of Service: Internet Access

Form 470 Application Number: 191060000547074

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Service Provider Name: Pioneer Long Distance, Inc.

Contract Number: N/A

Billing Account Number: M117775

Service Start Date: 07/01/2006

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Number of Months Recurring Service Provided in funding Year: 12

Annual Pre-discount Amount for Eligible Recurring Charges: \$10,620.00

Annual Pre-discount Amount for eligible Non-recurring Charges: \$0.00

Pre-discount Amount \$10,620.00

Discount Percentage Approved by the USAC: N/A

Funding Commitment Decision: \$0.00 – Contract Violation

Funding Commitment Decision Explanation: No contract was in place when the Form 471 certification was filed.

FCDL Date: 04/03/2007

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